

(2) *Transportation employees.* Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of § 60-741.23(b)(5) and (c).

§ 60-741.25 Health insurance, life insurance and other benefit plans.

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with State law.

(b) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(d) The contractor may not deny an individual with a disability equal access to insurance or subject an individual with a disability to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b), and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

Subpart C—Affirmative Action Program

§ 60-741.40 General purpose and applicability of the affirmative action program requirement.

(a) *General purpose.* An affirmative action program is a management tool designed to ensure equal employment opportunity and foster employment opportunities for individuals with disabilities. An affirmative action program institutionalizes the contractor's commitment to equality in every aspect of employment and is more than a paperwork exercise. An affirmative action program is dynamic in nature and includes measurable objectives, quantitative analyses, and internal auditing and reporting systems that measure the contractor's progress toward achieving equal employment opportunity for individuals with disabilities.

(b) *Applicability of the affirmative action program.* (1) The requirements of this subpart apply to every Government contractor that has 50 or more employees and a contract of \$50,000 or more.

(2) Contractors described in paragraph (b)(1) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(3) The affirmative action program shall be reviewed and updated annually by the official designated by the contractor pursuant to § 60-741.44(i).

(c) *Submission of program to OFCCP.* The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor also shall make the affirmative action program promptly available on-site upon OFCCP's request.

§ 60-741.41 Availability of affirmative action program.

The full affirmative action program, absent the data metrics required by § 60-741.44(k), shall be available to any

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employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

§ 60-741.42 Invitation to self-identify.

(a) *Pre-offer.* (1) As part of the contractor's affirmative action obligation, the contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in § 60-741.2(g)(1)(i) or (ii). This invitation shall be provided to each applicant when the applicant applies or is considered for employment. The invitation may be included with the application materials for a position, but must be separate from the application.

(2) The contractor shall invite an applicant to self-identify as required in paragraph (a) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.

(b) *Post-offer.* (1) At any time after the offer of employment, but before the applicant begins his or her job duties, the contractor shall invite the applicant to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in § 60-741.2(g)(1)(i) or (ii).

(2) The contractor shall invite an applicant to self-identify as required in paragraph (b) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.

(c) *Employees.* The contractor shall invite each of its employees to voluntarily inform the contractor whether the employee believes that he or she is an individual with a disability as defined in § 60-741.2(g)(1)(i) or (ii). This invitation shall be extended the first year the contractor becomes subject to the requirements of this section and at five year intervals, thereafter, using the language and manner prescribed by the Director and published on the OFCCP Web site. At least once during the intervening years between these invitations, the contractor must remind their employees that they may voluntarily update their disability status.

(d) The contractor may not compel or coerce an individual to self-identify as an individual with a disability.

(e) The contractor shall keep all information on self-identification confidential, and shall maintain it in a data analysis file (rather than in the medical files of individual employees). See § 60-741.23(d). The contractor shall provide self-identification information to OFCCP upon request. Self-identification information may be used only in accordance with this part.

(f) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees of whose disability the contractor has knowledge.

(g) Nothing in this section shall relieve the contractor from liability for discrimination in violation of section 503 or this part.

§ 60-741.43 Affirmative action policy.

Under the affirmative action obligations imposed by the act, contractors shall not discriminate because of physical or mental disability and shall take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60-741.20.

§ 60-741.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to the following elements:

(a) *Policy statement.* The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees with disabilities are provided the notice in a form that is accessible and understandable to the individual with a disability (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). The policy statement shall indicate the top United States executive's (such as the